

Service Date: May 17, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
OF Randal Joseph Lusin, d/b/a)	
Midnight Express, for a Class C)	DOCKET NO. T-9665
Certificate of Public Convenience)	
and Necessity.)	ORDER NO. 6045

ORDER COMPELLING DISCOVERY

BACKGROUND AND FINDINGS

On February 25, 1991 the Montana Public Service Commission (Commission) received an application from Randal Joseph Lusin, d/b/a Midnight Express, Havre, Montana (Applicant), for a Class C operating authority to transport tires, movie film, implement parts, radiators and other items. Applicant proposed service to Havre and Hill County, Chester and Liberty County, and to Chinook, Harlem, Malta, Glasgow and counties; or from Havre west 56 miles to Chester and east 160 miles to Glasgow.

On March 12, 1991, following published notice of the application, Molerway Freight Lines, Inc., Billings, Montana (Protestant or Molerway), filed its protest of this application.

On April 2, 1991 Molerway served the Applicant Interrogatories and Requests for Production pursuant to Rules 33 and 34, M.R.Civ.P. and ARM 38.2.3301, the Commission's procedural rule related to discovery.

On May 9, 1991 Molerway filed with the Commission a Motion to Compel Answers to Interrogatories, stating that the Applicant had failed to answer any of the interrogatories or to produce the requested documents within thirty (30) days as required by Rules 33 and 34, M.R.Civ.P.

On May 15, 1991, at a publicly noticed work session, the Commission voted to grant Molerway's motion, finding that Applicant should be compelled to answer the Interrogatories and provide the documents requested by Molerway.

CONCLUSIONS OF LAW

The Montana Public Service Commission is vested with supervision and regulation of motor carriers within the state, pursuant to Title 69, Chapter 12. § 69-12-201, MCA.

The Commission issues notice of an application for motor carrier operating authority, and upon receipt of a protest schedules a hearing on the application pursuant to contested case procedures. §§ 69-12-321 and 69-12-322, MCA, and ARM 38.2.301 et seq.

In contested case proceedings the Commission has adopted prehearing discovery procedures of civil actions, including Rules 33 and 34, M.R.Civ.P., Interrogatories and Requests for Production of documents.

Pursuant to Rule 37(a), M.R.Civ.P. and ARM 38.2.3301, the Commission has the power to order a noncompliant party to answer interrogatories and produce documents, upon motion and request for an order from the Commission.

ORDER

WHEREFORE, The Commission order grants Protestant's Motion to Compel and orders Applicant Randall Joseph Lusin, d/b/a Midnight Express, to file and serve answers to Interrogatories and produce the requested documents pursuant to and as directed by the documents served by Protestant Molerway Freight Lines, Inc., on April 2, 1991.

The Commission directs Applicant to file with the Commission and serve upon Protestant the answers and produce the requested documents on or before May 24, 1991. Failure to obey this order may result in a continuation of the June 21, 1991 hearing date.

Done and Dated this 15th day of May, 1991 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.